

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE,

Plaintiff,

v.

STEELER, INC.

Defendant.

No. 2:14-cv-00729-RSL

**AMENDED CONSENT DECREE**  
**[PROPOSED]**

**I. STIPULATIONS**

Plaintiff Puget Soundkeeper Alliance ("Soundkeeper") sent a sixty-day notice of intent to sue letter to Defendant Steeler, Inc. ("Steeler") on or about March 14, 2014, and filed a complaint on May 15, 2014, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, relating to discharges of stormwater from Steeler's facility in Seattle, Washington, and seeking declaratory and injunctive relief, civil penalties and attorneys' fees and costs.

Soundkeeper and Steeler agreed that settlement of this matter was in the best interest of the parties and the public, and entered a Consent Decree on July 19, 2016.

Under section II.7(d) of the Consent Decree, Steeler was to complete construction and full implementation of the Best Management Practices called for in the Compliance Plan by

1 September 30, 2016. Due to a variety of factors, a different treatment system was selected and  
2 the completion date was delayed. Puget Soundkeeper Alliance and Steeler have since conferred  
3 and believe that this Amended Consent Decree is the most appropriate means of resolving all  
4 issues and disputes associated with this delay.

5 Steeler paid \$20,000 to the Rose Foundation as required by Consent Decree section 8.  
6 Steeler paid \$45,000 to Smith & Lowney PLLC as required by Consent Decree section 9.

7 Steeler contracted with Lean Environment to prepare a Stormwater Engineering Report  
8 dated August 29, 2016 (hereinafter "Lean Engineering Report") describing installation of an  
9 Enpuriion MT stormwater treatment system. Washington Department of Ecology (Ecology)  
10 approved the Lean Engineering Report on September 7, 2016. Soundkeeper's expert Bill Lider,  
11 Lider Engineering PLLC, reviewed and provided comment on the report on October 26, 2016.  
12 Steeler's consultant Michael Johnson, Lean Environment, responded to Soundkeeper's comments  
13 on the report on November 3, 2017. Steeler completed installation of the Enpuriion MT  
14 stormwater treatment system on November 18, 2016. A copy of the Lean Engineering Report is  
15 attached to this Amended Consent Decree as Appendix 1.

16 Soundkeeper and Steeler stipulate to the entry of this Amended Consent Decree without  
17 trial, adjudication, or admission of any issues of fact or law regarding Puget Soundkeeper  
18 Alliance's claims or allegations set forth in its complaint and its sixty-day notice.

19 DATED this 9th day of June, 2017.  
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23  
24  
25  
26

JOYCE ZIKER PARKINSON, PLLC

SMITH & LOWNEY PLLC

By s/ Stephen R. Parkinson

By s/ Richard A. Smith

Stephen R. Parkinson, WSBA #21111  
Attorneys for Defendant Steeler, Inc.

Richard A. Smith, WSBA #21788  
Attorneys for Plaintiff Puget Soundkeeper  
Alliance

STEELER, INC.

PUGET SOUNDKEEPER ALLIANCE

By 

By \_\_\_\_\_

Matt F. Surowiecki  
President

Chris Wilke  
Puget Soundkeeper Alliance, Executive  
Director

## II. ORDER AND DECREE

THIS MATTER came before the Court upon the foregoing Stipulations of the parties.

Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. Each signatory for the parties certifies for that party that he or she is authorized to enter into the agreements set forth below.
3. This Amended Consent Decree applies to and binds the parties and their successors and assigns.
4. This Amended Consent Decree and any injunctive relief ordered within will apply to the operation, oversight, or both by Steeler of its facility located at or about 1002 Martin Luther King Jr. Way S., Seattle, WA 98178 ("Facility"), which is subject to National Pollutant Discharge Elimination System Permit No. WAR125358 ("NPDES permit").
5. This Amended Consent Decree is a full and complete settlement and release of all the claims in the complaint, the sixty-day notice and all other claims known and unknown,

JOYCE ZIKER PARKINSON, PLLC

SMITH & LOWNEY PLLC

By s/ Stephen R. Parkinson

By s/ Richard A. Smith

Stephen R. Parkinson, WSBA #21111  
Attorneys for Defendant Steeler, Inc.

Richard A. Smith, WSBA #21788  
Attorneys for Plaintiff Puget Soundkeeper  
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STEELER, INC.

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1 contingent or otherwise, for any acts or omissions, existing as of the date of entry of this  
2 Amended Consent Decree, that could be asserted under the Clean Water Act, 33 U.S.C. §§ 1251-  
3 1387, arising from operations of the Facility against Steeler, its subsidiaries, employees, agents,  
4 successors and assigns. These claims are released and dismissed with prejudice.

5  
6 6. This Amended Consent Decree is a settlement of disputed facts and law.

7 7. Steeler agrees to the following terms and conditions in full and complete  
8 satisfaction of all the claims covered by this Amended Consent Decree:

9 a. Steeler will comply fully with all conditions of its NPDES Permit and any  
10 successor, modified, or replacement permit authorizing discharges of stormwater  
11 associated with industrial activity from the Facility;

12 b. No later than July 1, 2017, Steeler will have its consultant update its  
13 stormwater pollution prevention plan ("SWPPP") to meet the requirements of the 2015  
14 ISGP, correct the deficiencies, and incorporate the requirements of the Lean Engineering  
15 Report and provide Soundkeeper with an electronic copy of the updated SWPPP;

16 c. No later than July 1, 2017, Steeler will have its consultant revise its  
17 Operation & Maintenance (O&M) Manual to accurately reflect the new treatment system  
18 and all associated Best Management Practices (BMPs) and required ongoing maintenance  
19 and provide Soundkeeper with an electronic copy of the revised O&M Manual.

20 d. Steeler will continue to monitor its stormwater discharges from its outfall,  
21 and conduct process sampling inside the system to evaluate the efficacy of the various  
22 treatment layers, at least once per month through December 31, 2017, subject to a  
23 stormwater discharge event occurring during the month, to determine whether the Lean  
24 Engineering Report improvements eliminate exceedances of the benchmarks. For the  
25  
26

1 purposes of this subparagraph, a valid sample is one taken within the first 12 hours of a  
2 stormwater discharge event and that is representative of the discharge, and otherwise taken  
3 and analyzed in conformity with the requirements of NPDES permit condition S4. For the  
4 purposes of this subparagraph, Steeler may average monitoring results of multiple valid  
5 samples that are taken within the same month. Steeler must provide all sampling data to  
6 Soundkeeper no later than the 15<sup>th</sup> day of the month following each sample.  
7

8 e. Steeler agrees to waive ISGP condition S8.D5(e), and not to request an  
9 extension or waiver pursuant to ISGP condition S8.D5(c). If Steeler exceeds three  
10 benchmarks in 2017, Steeler agrees that such failures will trigger the requirement to  
11 engineer and install additional treatment best management practices (BMPs) with the goal  
12 of achieving the applicable benchmark values. In accordance with ISGP condition  
13 S8.D.3(b), Steeler must submit an engineering report detailing the new treatment BMPs no  
14 later than May 15, 2018. In accordance with ISGP condition S8.D5, Steeler must install  
15 and implement the new treatment BMPs no later than September 30, 2018;  
16

17 f. Steeler will allow Soundkeeper and its expert(s) to inspect the facility at a  
18 mutually agreeable time to observe Steeler's implementation of this Consent Decree,  
19 including compliance with the new SWPPP, O&M Manual, BMPs, and the NPDES  
20 permits, subject to an access agreement mutually agreed upon by the Parties. Steeler will  
21 pay for the reasonable costs of Soundkeeper's expert(s) for this inspection, not to exceed  
22 \$2,000, within fourteen (14) days of receipt of Soundkeeper's expert's invoice.  
23

24 g. For a period of three (3) years commencing on the effective date of this  
25 Amended Consent Decree, Steeler will, no later than the discharge monitoring report due  
26 dates specified by the Permit, send to Soundkeeper, without charge, copies of all

1 documents, including but not limited to discharge monitoring reports, correspondence,  
2 engineering reports, electronically transmitted information, and inspection reports,  
3 concerning the Permit or any successor, modified, or replacement permit that Steeler has  
4 transmitted to, or received from the Washington Department of Ecology since the previous  
5 submission to Soundkeeper under this paragraph.  
6

7 8. Not later than seven (7) days after the entry of this Amended Consent Decree by  
8 this Court, Steeler will pay twenty five hundred dollars (\$2,500) to the Rose Foundation for the  
9 Environment for a project or projects to improve or protect the water quality of Puget Sound as  
10 described in **Appendix II** to this Consent Decree. Checks will be made to the order of and  
11 delivered to: Rose Foundation for the Environment, 1970 Broadway, Suite 600, Oakland, CA  
12 94612-2218. Payment will include the following reference in a cover letter or on the check:  
13 "Amended Consent Decree, Puget Soundkeeper Alliance v. Steeler, Inc." A copy of the check  
14 and cover letter, if any, will be sent simultaneously to Soundkeeper and its counsel.  
15

16 9. Within seven (7) days of entry of this Amended Consent Decree by the Court,  
17 Steeler shall pay Soundkeeper's actual litigation fees, expenses, and costs (including  
18 reasonable attorney and expert witness fees) incurred in this matter in the amount of four  
19 thousand five hundred dollars (\$4,500) by check payable and mailed to Smith & Lowney,  
20 PLLC, 2317 East John St., Seattle, WA 98112, attn: Richard A. Smith. Steeler's payment  
21 shall be in full and complete satisfaction of any claims Soundkeeper has or may have, either  
22 legal or equitable, and of any kind or nature whatsoever, for fees, expenses, and costs incurred  
23 in the resolution of the consent decree dispute issues arising prior to the date of the proposed  
24 Amended Consent Decree.  
25

26 10. This Court retains jurisdiction over this matter. And, while this Amended Consent

1 Decree remains in force, this case may be reopened without filing fee so that the parties may  
2 apply to the Court for any further order that may be necessary to enforce compliance with this  
3 decree or to resolve any dispute regarding the terms or conditions of this Amended Consent  
4 Decree. In the event of a dispute regarding implementation of, or compliance with, this Amended  
5 Consent Decree, the parties must first attempt to resolve the dispute by meeting to discuss the  
6 dispute and any suggested measures for resolving the dispute as provided in section II.17 of this  
7 Amended Consent Decree. The provisions of section 505(d) of the Clean Water Act, 33 U.S.C. §  
8 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness  
9 fees) to any prevailing or substantially prevailing party, will apply to any proceedings seeking to  
10 enforce the terms and conditions of this Amended Consent Decree.  
11

12 11. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent  
13 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior  
14 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney  
15 General and the Administrator of the U.S. Environmental Protection Agency (EPA). Therefore,  
16 upon the filing of this Amended Consent Decree by the parties, Soundkeeper will serve copies of  
17 it upon the Administrator of the EPA and the Attorney General, with copy to Steeler.  
18

19 12. This Amended Consent Decree will take effect upon entry by this Court. It  
20 terminates three (3) years after that date, or 90 days after the parties' completion of all obligations  
21 imposed by this Amended Consent Decree, whichever is later.  
22

23 13. Both parties have participated in drafting this Amended Consent Decree.

24 14. This Amended Consent Decree may be modified only upon the approval of the  
25 Court.

26 15. If for any reason the court should decline to approve this Amended Consent



1 Decree in the form presented, this Amended Consent Decree is voidable at the discretion of either  
2 party. The parties agree to continue negotiations in good faith in an attempt to cure any objection  
3 raised by the court to entry of this Amended Consent Decree.

4 16. Notifications required by this Amended Consent Decree must be in writing. The  
5 sending party may use any of the following methods of delivery: (1) personal delivery; (2)  
6 registered or certified mail, in each case return receipt requested and postage prepaid; (3) a  
7 nationally recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other  
8 communication regarding this decree to be valid, it must be delivered to the receiving party at the  
9 one or more addresses listed below or to any other address designated by the receiving party in a  
10 notice in accordance with this paragraph 17.  
11

12  
13 **if to Puget Soundkeeper Alliance:**

14  
15 Katelyn Kinn  
16 130 Nickerson Street, Suite 107  
17 Seattle, WA 98109  
email: katelyn@pugetsoundkeeper.org

18 **and to:**

19 Richard Smith  
20 Smith & Lowney PLLC  
21 2317 East John St.  
Seattle, WA 98112  
email: rasmithwa@igc.org

22 **if to Steeler:**

23 Mike Dollard

24 **and to:**

25 Stephen R. Parkinson  
26 JOYCE ZIKER PARKINSON, PLLC  
1601 Fifth Avenue, Suite 2040

1 Seattle, WA 98101  
2 Email: sparkinson@jzplaw.com

3 A notice or other communication regarding this Amended Consent Decree will be  
4 effective when received unless the notice or other communication is received after 5:00 p.m. on a  
5 business day, or on a day that is not a business day, then the notice will be deemed received at  
6 9:00 a.m. on the next business day. A notice or other communication will be deemed to have  
7 been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally  
8 recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if  
9 the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of  
10 a change in address for which no notice was given, then upon that rejection, refusal, or inability to  
11 deliver; or (c) for notice provided via e-mail, upon receipt of a response by the party providing  
12 notice or other communication regarding this Amended Consent Decree.  
13

14 DATED this 6<sup>th</sup> day of Sept., 2017.  
15

16   
17 HON. ROBERT S. LASNIK  
18 UNITED STATES DISTRICT JUDGE  
19

20 Presented by:

21 JOYCE ZIKER PARKINSON, PLLC

SMITH & LOWNEY, PLLC

22 By s/ Stephen R. Parkinson  
23 Stephen R. Parkinson, WSBA #21111  
24 Attorneys for Defendant Steeler, Inc.

By s/ Richard A. Smith  
Richard A. Smith WSBA #21788  
Meredith A. Crafton WSBA #46558  
Attorneys for Plaintiff  
Puget Soundkeeper Alliance